



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 5, 2010

CBCA 2153-RELO

In the Matter of GRETCHEN LIZZA

Gretchen Lizza, Arlington, VA, Claimant.

Leslie A. Jordan, Naval Surface Warfare Center, Dahlgren Division, Department of the Navy, Dahlgren, VA, appearing for Department of the Navy.

STEEL, Board Judge.

Claimant, Gretchen Lizza, requests a two-year extension of the two-year deadline for movement and storage of her household goods (HHG) at government expense. The agency which employs her, the Department of the Navy, maintains that it is precluded from granting Ms. Lizza the extension under the facts of her case. The Board agrees with the agency that she is not entitled to the extension.

On November 11, 2008, claimant, while living in Marietta, Georgia, accepted a position as Engineer with the Naval Surface Warfare Center in Dahlgren, Virginia, to report on November 24, 2008. Since she was a new appointee, on December 1, 2008, she was authorized \$10,276.20 for shipment of HHG up to 18,000 pounds from Marietta to her new duty station in Virginia.

However, within a week of her report date, she was detailed approximately fifty miles away to the Washington Navy Yard in the District of Columbia. Over the course of her first year with the Navy, the Navy was uncertain as to whether she would remain on detail at the Navy Yard, or be returned to a permanent billet in Dahlgren, Virginia. Because of this uncertainty, Ms. Lizza delayed the transportation of her household goods. Finally, partly because of the command's indecision concerning her permanent place of employment, Ms. Lizza accepted a permanent billet with a different office at the Navy Yard, NAVSEA

05S, commencing January 1, 2010. She still has not arranged for transport of her HHG and requested the two-year extension.

The Commander of the Naval Surface Warfare Center has endorsed her request for this additional two-year extension of HHG transport because the uncertainty over the location of her permanent assignment was caused by her employer, not Ms. Lizza. Furthermore, Ms. Lizza reports being told that the funds for her HHG move have already been obligated, and the delay of movement of her HHG would therefore have no impact on that funding. The Navy nonetheless denied her request for a two-year extension, and Ms. Lizza appealed that denial to this Board. As unfortunate as her circumstances are, the agency was correct in its denial.

A new federal appointee is entitled to certain benefits if she moves to a duty station away from her place of residence at the time of appointment. 5 U.S.C. §§ 5722, 5723 (2006). Among those benefits are the transfer and temporary storage of household goods. *Id.* Under the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) -- which apply to Ms. Lizza as a civilian employee of the Department of Defense -- generally the shipment of HHG must occur within two years of the effective date of the appointment (here November 24, 2008). *Robert E. Solomon*, CBCA 524-RELO, 07-1 BCA ¶ 33,533; 41 CFR 302-2.110 (2008); JTR C1057.

Under 41 CFR 302-2.110 (FTR) and JTR C1057, HHG reimbursement can be extended by the Government in three circumstances: for furloughed active duty members, for those employees appointed to a duty station outside the continental United States (OCONUS), and for those transferred employees who are also entitled to reimbursement of real estate expenses incident to the sale and/or purchase of a home. *Solomon*. Clearly, Ms. Lizza was not a furloughed active duty member or appointed to a duty station OCONUS. The benefits new employees enjoy are similar to but less extensive than those benefits accorded current federal employees who are transferred in the interest of the Government. Because she was a new appointee, Ms. Lizza was not entitled to recover any real estate expenses. Thus, the third exception allowing for a two-year extension of HHG entitlement when connected to reimbursable real estate transactions cannot be applied to her situation.

She is therefore is not entitled to a two-year extension of HHG transportation and reimbursement. *Solomon*; *see also*, *David A. Rose*, CBCA 1098-RELO, 08-2 BCA ¶ 33,963; *Ernestine Pouncy*, GSBCA 16859-RELO, 06-2 BCA ¶ 33,437; *David W. Brown*, GSBCA 16721-RELO, 06-1 BCA ¶ 33,147 (2005). In order to be reimbursed for the transport of her HHG, the goods must be transported to Dahlgren, Virginia (or the Washington, D.C., area if the Navy considers Washington within commuting distance of Dahlgren), on or before

November 24, 2010. *See Solomon* (new civilian employee of DOD not entitled to payment for the HHG shipment made after the allowable two-year period).

As much as her command might wish to extend the eligibility of her HHG for transfer at government expense, absent legal authority for the extension, an extension cannot be granted to Ms. Lizza. The fact that the command urged that the Navy extend her time period for transporting her HHG is of no legal significance. While denying the extension may seem unfair, allowing an agency to make a payment once authorization by statute or regulation has expired would violate the Appropriations Clause of the Constitution. U.S. Const. art. I, § 9, cl. 7 (“No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”); *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900.

Decision

The claim is denied.

CANDIDA S. STEEL
Board Judge